

VZCZCXRO2824
PP RUEHROV
DE RUEHNR #2140/01 2541649
ZNY CCCCC ZZH
P 101649Z SEP 08 ZDS CTG STATE SVC #0092 1561038
FM AMEMBASSY NAIROBI
TO SECSTATE WASHDC PRIORITY 7004
INFO IGAD COLLECTIVE
AMEMBASSY HARARE 1643
AMEMBASSY KHARTOUM 2149
AMEMBASSY PRETORIA 9202

C O N F I D E N T I A L SECTION 01 OF 04 NAIROBI 002140

C O R R E C T E D C O P Y (INFO ADDEES)

SIPDIS

AF/E FOR MARIA BEYZEROV, H FOR ANDREW MACDERMOTT

E.O. 12958: DECL: 09/10/2018

TAGS: [OREP](#) [PREL](#) [PGOV](#) [KDEM](#) [KCRM](#) [ASEC](#) [ETRD](#) [PREF](#) [KE](#)

SUBJECT: PRIME MINISTER, DEFENSE MINISTER BRIEF CODEL PAYNE

NAIROBI 00002140 001.2 OF 004

C O R R E C T E D COPY - ADDED ADDRESSEES

Classified By: Deputy Chief of Mission Pamela Slutz for reasons 1.4 (b) and (d).

¶1. (C) Summary: In separate meetings on August 7-8, CODEL Payne discussed a wide range of issues with Prime Minister Raila Odinga, Defense Minister Mohammed Yusuf Haji, Trade Minister Uhuru Kenyatta, Minister of Higher Education Sally Kosgei, former President Daniel arap Moi, Nobel laureate Wangari Maathai, and members of the Parliamentary Committee on Defense and Foreign Relations. Odinga focused on constitutional reform and the future governance system of Kenya, the progress of the commissions investigating post-election violence and electoral irregularities, and the need to create a better business environment in Kenya. Haji expressed concern about ongoing insecurity in Somalia and the threat it represents to Kenya's national security. CODEL Payne also held a number of Somalia-focused meetings on August 7-8 and 11, including meetings with TFG representatives, international NGOs operating in Somalia, UN Special Representative on Somalia Ahmedou Ould-Abdallah, and officials from the UN High Commission for Refugees (UNHCR) responsible for Kenya and regional programs. The CODEL attended the Mission's commemoration of the tenth anniversary of the Embassy bombing on August 7. End summary.

ATTENDEES

¶2. (U) Representative Donald Payne (D-NJ), Chairman of the Subcommittee on Africa and Global Health, House Committee for Foreign Affairs, met with a number of Kenyan and Somali officials on August 7-8 and August 11, 2008. On August 7, CODEL Payne met with Deputy Speaker of the Kenyan Parliament Farah Maalim and representatives of the Parliamentary Committees on Defense and Foreign Relations; representatives of the Transitional Federal Government of Somalia; and Kenyan Defense Minister Yusuf Haji. Participating in the August 7 meetings were Rep. Payne, Ted Dagne of the Congressional Research Service, and Noelle LuSane, Staff Director, House Committee on Foreign Affairs, Subcommittee on Africa and Global Health. On August 8, Rep. Payne and Mr. Dagne met with Kenyan Prime Minister Raila Odinga, NGOs operating in Somalia, UN Special Representative to the Secretary General on Somalia Ahmedou Ould Abdallah, Minister of Trade Uhuru Kenyatta, Minister of Higher Education Sally Kosgei, former President Moi, and former Parliamentarian and women's rights activist Njoki Ndungu. On August 11, Rep. Payne and Mr. Dagne met with Nobel laureate Professor Wangari Maathai and representatives from the Kenya and regional offices of the UN High Commission on Refugees.

MEETING WITH PRIME MINISTER ODINGA

13. (U) On August 8, Representative Payne and Mr. Dagne met with Prime Minister Odinga for a lengthy dialogue on a number of important issues. Also present were DCM Pamela Slutz, National Intelligence Officer for Africa at the National Intelligence Council and former Ambassador to Kenya Johnnie Carson and poloff (notetaker). On the Kenyan side, participants were PM Odinga, Ambassador Binsai Chepsongol, Director of the Americas Office at the Ministry of Foreign Affairs, and Caroli Omondi, Odinga's chief of staff.

CONSOLIDATING UNITY AND THE PM'S ROLE

14. (C) Odinga noted that, since his June 2008 visit to Washington, there had been a number of developments in the workings of the coalition government. He reported efforts to consolidate unity between the two factions of the coalition (Odinga's ODM party and affiliates, and President Kibaki's PNU party and affiliates) were largely successful. Odinga said that a number of items on the reform agenda agreed to during the Annan mediation process are still pending (he cited constitutional reform, land reform, truth and reconciliation, questions of responsibility for post-election violence), but that the coalition was working to make progress on these issues. The role of the Prime Minister is new, Odinga added and noted that, as it is human nature to resist new things, he was not surprised to find resistance in some quarters to his new role and responsibilities. However, he said, he has a productive working relationship with President Kibaki, who has "put his foot down" and ordered some previously reluctant cabinet ministers to cooperate with Odinga.

15. (C) Because the cabinet is so large, Kibaki and Odinga had agreed to set up six interagency cabinet-level committees to discuss issues and refer those not resolved or needing

NAIROBI 00002140 002.2 OF 004

Cabinet-level approval to the full Cabinet. The President chairs the committee on national security, consisting of the ministries of defense and internal security/provincial administration and the National Security and Intelligence Service (NSIS). Odinga clarified that he, as Prime Minister, has "no direct authority" over these three units or over the Kenya Police Service. The Prime Minister chairs the other five committees covering infrastructure, services, finance, investment/public-private partnerships and planning. In fact, the ministries of planning and public service report directly to the Prime Minister. These committees make decisions and then report back in plenary sessions of the whole cabinet. The PM noted that implementation of GOK policy and programs is his responsibility--one he takes very seriously.

UPDATE ON COMMISSIONS INVESTIGATING ELECTION, VIOLENCE

16. (C) Odinga noted that the commission looking into the conduct of the elections (the Kriegler commission) was well advanced in its work and its report was expected soon, and that the commission examining post-election violence (the Waki commission) had begun collecting evidence and had been granted a one-month extension to its original three-month mandate. Odinga added that the bill to establish a Truth Justice and Reconciliation Commission was currently in Parliament (note: Parliament is currently in recess until early October). The scope of the proposed commission would be to examine historical justices and inequalities dating back to Kenya's independence, with a mandate of about one year. Odinga also noted that Bishop Desmond Tutu had been mentioned as a possible chairman/commissioner due to his work on reconciliation efforts in South Africa. He did not say whether Tutu had actually been approached by anyone from the Kenyan side.

CONSTITUTIONAL REFORM BILLS MOVING AHEAD, NEED SOME REVISION

17. (C) Odinga said that there are currently two bills related to the constitutional reform process in Parliament: the Constitution of Kenya Amendment Bill and the Constitution of Kenya Review Bill. The first bill entrenches the review process in the constitution to insulate it from litigation; the second sets out a roadmap for the review process. Odinga noted that there are some concerns with both bills. The first draft tabled of the Amendment Bill set out unrealistically high demands for voter turnout and approval of a new constitution by referendum, but Odinga felt these provisions were likely to be amended before Parliament reconvenes. Odinga also noted that he did not think much time was needed for the constitutional reform process because the majority of any proposed text was not likely to be contentious. Odinga noted that the issues had been fully debated, clearly delineated and mostly resolved in the multi-year (2003-2005) national consultation process that produced the two competing drafts of a new constitution: the so-called "Bomas" draft (favored by ODM, among others) and the so-called "Wako" draft (named after the Attorney General). (Note: It was the Wako draft, submitted by the Kibaki government for a national referendum in November 2005, that was previously rejected by the voters.) Odinga thought that it was not necessary to repeat the multi-year process. A panel of experts selected by Parliament could more efficiently examine the remaining controversial issues, he added. Odinga cited the two most controversial issues as: first, devolution, or the decentralization of authorities and powers to new regional administrative units which would replace the existing provincial/district units, and second, the relationship and power sharing between the President and Vice President and the Prime Minister. Odinga added that even those who were previously opposed to devolution or decentralization now agree that some degree of devolution is necessary.

HOW SHOULD KENYA BE GOVERNED?

18. (C) Not surprisingly, Odinga expressed a preference for a Parliamentary rather than a Presidential system for Kenya, and said that Kenya's experience since independence had highlighted the weaknesses of the Presidential system in the Kenyan context. Odinga expressed concerns about the potentially divisive nature of a system that concentrates so much power in the hands of the President, and noted that the winner-take-all nature of this system had inspired some politicians to instill artificial fears in some communities that induced them to vote as an ethnic bloc out of fear. Odinga added that a Parliamentary system where the party with the majority of seats forms a government and chooses a Prime Minister would be better for Kenya. Odinga argued that Kenya

NAIROBI 00002140 003 OF 004

would be better off without presidential elections because, given the stakes involved, these elections had evolved into violent, tribalistic competitions that would continue to pit Kenyans against Kenyans every five years. (Comment: It is clear that Odinga and the majority of ODM still favor a severe reduction in the powers of the presidency. End comment.)

REFUGEES: CONCERN ABOUT ECONOMIC MIGRANTS

19. (C) Mr. Dagne raised the issue of Somali refugees in Kenya, and asked about the impact of the official closure of the Kenya-Somalia border and whether Kenya was considering opening more camp space for recent Somali arrivals. Odinga responded that Kenya has long been a generous host to refugees fleeing war-torn neighboring countries. He noted that the government was considering moving refugees from Dadaab to Kakuma, as there is more space there since some southern Sudanese refugees have returned home. He also noted that some asylum seekers might properly be considered economic migrants rather than refugees, and that Kenya will continue to accept all legitimate refugees.

FACILITATING TRADE AND INVESTMENT

¶10. (C) Odinga proudly described his recent engagement with the private sector, including a series of plenary and roundtable discussions chaired by Odinga with business leaders and key GOK officials in ministries like Trade, Industrialization, Finance, and Agriculture. Odinga said that, as a result of these discussions, a number of key policy decisions that had been pending for a long time were finally made. For example, GOK ministries and parastatals committed to address power outages in Nairobi's industrial area, to reduce the number of police roadblocks on major routes to speed cargo traffic, to expedite backlogged VAT refund claims, and to stop illegal export of copper stolen from power lines and transformers to China. He cited complex bureaucratic procedures, corruption, poor infrastructure and insecurity as major obstacles to growth in foreign direct investment. He noted that he plans to do a major trade promotion trip to the U.S. in early 2009.

SECURITY, POLICING AND CRIME

¶11. (C) Odinga agreed with Rep. Payne that crime and insecurity are major challenges confronting Kenya. He said that the GOK plans to introduce closed-circuit TV monitoring in cities, as well as to raise salaries for police to combat petty crime and bribery committed by police officers. He noted that there are a number of small arms in the hands of criminals, which he attributed to weapons crossing Kenya's insecure and porous border with Somalia. He also noted efforts to achieve the recommended UN ratio of police to citizens, as well as the need to depoliticize Kenya's security forces. Odinga and his advisor, Caroli Omondi, mentioned that the Waki Commission was also tasked with recommending ways to increase the efficiency of the police. One of the Waki Commissioners, retired New Zealand police official Gavin McFadden, was responsible for compiling these recommendations. The options under consideration range from putting the police more firmly under the control of the Minister of Internal Security (instead of the largely autonomous Police Commissioner) to decentralizing the police and changing their mission into more of a community-based police force.

BASHIR INDICTMENT: FOCUS SHOULD REMAIN ON AU INTERVENTION

¶12. (C) When asked about the ICC's recent indictment of Sudanese President Bashir, Odinga said that his position was a bit different than the official GOK position, which was not yet formulated because the issue had yet to be discussed by the full Cabinet. He said that he remained very concerned that Bashir was not doing enough to end the genocide in Darfur, and that the ICC indictment was something of a distraction from the core issue that the situation in Darfur was not being addressed by Bashir's government. He noted that the AU has the primary responsibility to push for a speedy resolution in Darfur, and that any UN or ICC efforts are complementary to the AU mandate.

ZIMBABWE: TIME FOR MDC TO MAKE A DEAL?

¶13. (C) Odinga reiterated that his strong stance on Zimbabwe remains unchanged, and noted that it seems to be bearing some fruit in terms of inspiring other African leaders to speak

NAIROBI 00002140 004.2 OF 004

out. (Note: Odinga cited the leaders of Tanzania, Rwanda, Burkina Faso and Botswana as members of the "new generation" that has been more forward-leaning on the Zimbabwe issue. Conversely, he cited Gabonese President Bongo as someone who inappropriately received Mugabe at the recent AU summit in Egypt with "velvet gloves.") Odinga mentioned that he had spoken to South African President Mbeki and urged him to be more proactive in the talks between Zimbabwean President Mugabe and his challenger, Morgan Tsvangirai. Odinga said that Tsvangirai's party should not accept any power-sharing

agreement unless it gave him some proper executive powers. He added that Tsvangirai should, however, consider an agreement in which Mugabe has made some concessions to lessen the power of the presidency. Such an agreement would be better than nothing, Odinga said, and might create a "safe exit" for Mugabe, which is in the interest of the Zimbabwean people. Odinga showed Rep. Payne a 50 billion Zimbabwe dollar note, which his sister had brought back from a recent visit to her daughter, who is still living in Zimbabwe, and cited it as a small concrete example of how bad things have gotten in that country. (Note: Odinga clearly sees himself as a mentor to Tsvangirai, and appears to empathize with Tsvangirai's predicament. His family connections to Zimbabwe, and the loss of his sister's formerly successful business there, have also kept the issue in the forefront for Odinga. End note.)

LAND RIGHTS AND IDPS

¶14. (C) Odinga noted that land has been a contentious issue in Kenya since independence, and cited post-independence decisions to allocate very large farms in Rift Valley to Kenyatta loyalists as one of the root causes of the recent conflict there. Because of the number of enormous farms of 2,000-5,000 acres in Rift Valley and Central provinces, Odinga said, many former residents have been pushed onto 3-5 acre plots or are squatting in the Mau forest. Odinga suggested moving some residents together into small settlements and consolidating some of their unsustainable small farms into successful larger-scale commercial farms for the benefit of all the landholders in the community, like the kibbutz model used in Israel. Odinga also noted that the Ministry of Lands is currently preparing a new land and land use policy, which will soon be presented to the relevant Cabinet committee and then published in Parliament. On internally displaced persons (IDPs), Odinga said that less than 100,000 remain displaced. Those IDPs are unable to return due to fear of a hostile environment or because they were originally squatters and now have nowhere else to go. He underlined the importance of the inter-ethnic reconciliation work currently being "spearheaded" by the GOK, with the participation of the provincial administrations, religious institutions, and civil society.

MEETING WITH MINISTER HAJI: BORDER FEARS

¶15. (C) On August 7, Rep. Payne and Mr. Dagne also met with Minister of Defense Mohammed Yusuf Haji. Haji is a close associate of President Kibaki. Haji described the coalition government as working well, and felt that cooperation across party lines in the Cabinet committees was good. Haji expressed concern about the security situation in Somalia and the threat it presents to Kenya's national security interests. (Note: Haji, an ethnic Somali, is from Kenya's North Eastern province that borders Somalia. End note.) Haji emphasized the urgent need for a functioning government in Somalia, which would weaken the influence of Islamist extremism in the country. He noted that, although physical closure of the nearly 1,000 kilometer long border was not possible, it was important to maintain the official border closure and troop deployment in strategic areas in order to prevent any influx of bad actors into Kenya. Regarding the Ethiopian presence in Somalia, Haji noted that, given the long history of distrust between Somalis and Ethiopians, any Ethiopian intervention will be viewed with suspicion by Somalis even if the underlying intent is good. He also expressed concern that the Ethiopian presence in Somalia could be used by Islamists as a pretext to gain increased support for their political agenda. Mr. Dagne raised the issue of Kenyan Somalis allegedly extradited to Ethiopia in early 2007. While sympathetic, Haji pointed out that citizenship in the border region is often ambiguous, and many Kenyan Somalis, as well as members of the coastal Digo tribe, have no official papers, passport, or national identity card.

¶16. (U) CODEL Payne has not had the opportunity to clear on this cable.
RANNEBERGER